

121 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05-6-098
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04-135-101
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02-111-118
Ameren Services Company, <i>et al.</i>	Docket No. EL03-212-114

ORDER APPROVING UNCONTESTED
PARTIAL SETTLEMENT

(Issued October 23, 2007)

1. On December 12, 2006, Multiple Transmission Dependent Utilities (MTDUs)¹ and certain settling Midwest ISO Transmission Owners (Settling TOs)²

¹ The MTDUs are: Indiana Municipal Power Agency; Blue Ridge Power Agency; Central Virginia Electric Cooperative; and Old Dominion Electric Cooperative.

² The Settling Midwest ISO TOs are: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; American Transmission Company LLC; American Transmission Systems, Incorporated, a
(continued...)

(collectively, Settling Parties) filed a settlement agreement (Settlement) that resolves among them all the issues related to the Seams Elimination Cost Adjustment (SECA) charges that had been set for hearing in the above-captioned dockets.³ The Settlement provides a complete resolution of all of the SECA obligations of the MTDUs to the Settling TOs at issue in these proceedings, including any and all lost revenue claims payable by the MTDUs for the benefit of the Settling TOs.

2. The Settling TOs agree to make payments to the MTDUs in accordance with Appendix A of the Settlement. The Settling Parties agree that these refunds shall not be subject to interest. The Settling Parties also agree that, in the event a refund paid to any of the MTDUs is later determined by the Commission to actually be owed to another entity, the affected MTDU and the entity to whom the refund is owed will resolve the issue between themselves and hold the Settling TOs harmless with regard to any claims arising out of such a refund payment. The Settling TOs also agree that they will not impose upon the MTDUs SECA charges or other similar transitional transmission charges prior to February 1, 2008.

3. The settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

subsidiary of FirstEnergy Corp.; City Water, Light & Power (Springfield, IL); Duke Energy Shared Services, Inc. f/k/a Cinergy Services, Inc. for The Cincinnati Gas & Electric Co. d/b/a Duke Energy Ohio, Inc., PSI Energy, Inc. d/b/a Duke Energy Indiana, Inc., and The Union, Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.; E.ON U.S. LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

³ *Midwest Indep. Transmission Operator, Inc.*, 109 FERC ¶ 61,168 (2004); *see also Midwest Indep. Transmission Operator, Inc.*, 116 FERC ¶ 63,030 (2006).

4. Pursuant to section 6.04 of the Settlement, the standard of review for any modifications to the Settlement requested by a settling party that are not agreed to by all Settling Parties shall be the public interest standard under the *Mobile-Sierra* doctrine. The standard of review for any modifications requested by a non-settling party and the Commission will be the most stringent standard permissible under applicable law.⁴

5. This order terminates Docket Nos. ER05-6-098, EL04-135-101, EL02-111-118 and EL03-212-114.

By the Commission. Commissioner Kelly concurring with
a separate statement attached.
(S E A L) Commissioner Wellinghoff dissenting in part with
a separate statement attached.

Kimberly D. Bose,
Secretary.

⁴ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard. *Ne. Util. Serv. Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Pub. Util. Comm'n v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the “most stringent standard permissible under applicable law” with respect to any future modifications to the settlement agreement that may be proposed by a non-party or the Commission acting *sua sponte*. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. It is uncontested, does not affect non-settling parties, and resolves the amount of the claimed SECA obligations between the parties for the relevant prior period. The settlement does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply to review any possible future modifications sought by non-parties or the Commission. Indeed, in a sense, the standard of review is irrelevant here. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 4), I concur with the order’s approval of this settlement agreement.

Suede G. Kelly

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to their settlements that may be sought by any of the parties. With regard to such changes sought by either a non-party or the Commission acting *sua sponte*, the parties have asked the Commission to apply the most stringent standard permissible under applicable law. In response to the latter request, the Commission states that the “public interest” standard should apply to future changes sought by a non-party or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

Finally, it is worth noting that the standard of review is, in a sense, irrelevant here for the reasons set forth in Commissioner Kelly’s separate statement.

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner